Teams Civic Services, Inc. *and* Local 32B-32J and Local 144, Service Employees International Union, AFL-CIO. Case 29-CA-9499

July 18, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on February 22, 1982, by Local 32B-32J and Local 144, Service Employees International Union, AFL-CIO, herein called the Union, and duly served on Teams Civic Services, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint on March 29, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on January 7, 1982, following a Board election in Case 29-RC-5084, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about March 17, 1982,[2] and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On April 20, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On May 5, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 7, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and opposition to the Motion for Summary Judgment, Respondent contends, *inter alia*, that the complaint should be dismissed because it was improperly filed and that the certification of the Union is invalid because the Board improperly obtained jurisdiction over the representation petition. Specifically, Respondent contends that fraudulent statements and misrepresentations were contained in the petition for certification. Additionally, Respondent states that the Hearing Officer in the representation case would not permit any evidence to be adduced as to the matters of alleged fraud.

Review of the record herein, including that in the representation proceeding, Case 29-RC-5084, establishes that, upon a petition duly filed under Section 9(c) of the Act, a hearing was held before a hearing officer of the National Labor Relations Board. Thereafter, the Regional Director issued his Decision and Direction of Elections[3] on April 10, 1981. The Regional Director found, *inter alia*, that Respondent was engaged in commerce within the meaning of the Act and met the Board's jurisdictional requirements, that the Union is a labor organization within the meaning of the Act, that Respondent employed a sufficiently representative and substantial complement of employees to warrant the holding of an election, and that the Union's showing of interest was sufficient to support the petition.[4] On April 23, 1981, Respondent

[1] Official notice is taken of the record in the representation proceeding, Case 29-RC-5084, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F. Supp. 573 (D.C. Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] While the General Counsel maintains in his Motion for Summary Judgment that Respondent has refused to bargain collectively at all times since on or about January 28, 1982, in its answer to the complaint, Respondent contends that the Union did not make a request for bargaining until March 3, 1982. However, Respondent also stated that at its board of directors' meeting of March 17, 1982, it concluded that it needed more information before it could determine whether it would agree to recognize and bargain with the Union. In his Motion for Summary Judgment, the General Counsel asserts that such a position constitutes a failure and refusal to meet and bargain with the Union. We agree with the General Counsel's conclusion. Accordingly, we accept March 17, 1982, as the date from which Respondent has refused to bargain collectively.

[3] The underlying representation case involved petitions to represent certain employees of both the Respondent and another employer, Home Attendant Program of Central Harlem Meals on Wheels, Inc. The latter employer is not a party in the present case.

[4] Respondent did not and has yet to make an offer of proof to support its allegations of fraud and deceit concerning the Union's showing of interest. Although Respondent did, after considerable litigation following the hearing, provide the Regional Director with a list of all its employees, including those not within the unit found appropriate, Respondent admits that, despite repeated requests by the Hearing Officer, it failed to produce payroll lists and other documents, some of which were also sub-

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filed a request for review in which Respondent alleged, *inter alia*, that the representation petition was filed and processed in the incorrect Regional Office and that the evidence of a showing of interest was insufficient and contained possible forgeries. By telegraphic order on May 12, 1981, the Board denied Respondent's request for review.

In accordance with the Regional Director's Decision and Direction of Elections, a secret-ballot election was conducted on December 15, 1981. The tally of ballots shows that the Union won the election. No objections to conduct affecting the results of the election were filed. On January 7, 1982, the Regional Director issued his Certification of Representative.

In its answer to the complaint, Respondent contends that the complaint was improperly filed in Region 29. Respondent states that a complaint must be issued upon a charge filed in the Regional Office covering the geographical area where the alleged unfair labor practice took place. Respondent contends that the appropriate Regional Office is Region 2, where its principal office and place of business is located. Section 102.10 of the Board's Rules and Regulations provides that a charge alleging that an unfair labor practice has occurred or is occurring in two or more Regions may be filed with the regional directors of any such Regions. Respondent cites no record evidence and offers no evidence that all of its home attendants, who work in the homes of hundreds of disabled clients, are located within Region 2 or that none work in Region 29. Moreover, Respondent does not contend that it has been prejudiced as a result of the alleged improper filing.

In its answer to the complaint, Respondent also denies its jurisdictional standing and the Union's status as a labor organization. However, as noted above, Respondent's jurisdictional standing and the Union's status were contested in the underlying representation proceeding and the Regional Director found that Respondent met the Board's jurisdictional requirements and that the Union is a labor organization within the meaning of the Act. Respondent offers nothing to controvert these findings. Thus, it appears that Respondent is attempting to raise issues in the present case which were, or could have been, raised in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[5]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.[6] Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent Teams Civic Services, Inc., a not-for-profit corporation with it principal office and place of business located at 139 West 137th Street, New York, New York, is engaged in providing home care to disabled persons and related services. During the year ending December 31, 1981, a period representative of its annual operations generally, Respondent, in the course and conduct of its business operations, performed services valued in excess of $500,000 under contract for the Department of Social Services, Human Resources Administration, of the city of New York. Such services valued in excess of $500,000 were partially financed by and involved the interstate transfer of substantial funds of the United States Government.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effecuate the policies of the Act to assert jurisdiction herein.

penaed, need to determine the adequacy of the showing of interest. Because Respondent failed to offer specific evidence to support its allegations of fraud or deceit, *Pearl Packing Company*, 116 NLRB 1489 (1956), the Regional Director was administratively satisfied that the showing of interest was adequate, *O. D. Jennings & Company*, 68 NLRB 516 (1946).

[5] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[6] We find no merit to Respondent's denial in its answer to the complaint, or its contention in its response to the Motion for Summary Judgment, that it is not refusing to bargain with the Union. By insisting in this proceeding that there still are matters to be resolved in reply to the Union's "Petition for Certification"—matters already considered and disposed of in the underlying representation case—Respondent clearly is contesting the validity of the certification of representative issued the Union and, thus, its concomitant statutory obligation to recognize and bargain with that labor organization. Accordingly, regardless of how it characterizes such conduct, Respondent is refusing to bargain with the Union as the exclusive representative of the employees in the unit found appropriate. See also fn. 2, *supra*.

II. THE LABOR ORGANIZATION INVOLVED

Local 32B-32J and Local 144, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time attendants employed by Teams Civic Services, Inc., excluding office clerical employees, guard and supervisors as defined in the Act.

2. Certification

On December 15, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 29, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on January 7, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about March 3, 1982,[7] and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about March 17, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since March 17, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

[7] In his Motion for Summary Judgment, the General Counsel asserts that since on or about January 28, 1982, and at all times contiuning to date, the Union has requested that Respondent meet and bargain with it collectively. In its answer to the complaint, Respondent denies that such a request was made on January 28, but admits that a request to bargain collectively with the Union as the exclusive bargaining representative of the employees in the unit found appropriate was made on or about March 3, 1982. Accordingly, we accept the March 3, 1982, date.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Teams Civic Services, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 32B-32J and Local 144, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time attendants employed by Teams Civic Services, Inc., excluding office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for

the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since January 7, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 17, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Teams Civic Services, Inc., New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 32B-32J and Local 144, Service Employees International Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time attendants employed by Teams Civic Services, Inc., excluding office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its principal office and place of business located at 139 West 137th Street, New York, New York, copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 32B-32J and Local 144, Service Employees International Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time and regular part-time attendants employed by Teams Civic Services, Inc., ex-

cluding office clerical employees, guards and supervisors as defined in the Act.

TEAMS CIVIC SERVICES, INC.